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9 Attorney for Plaintiff

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Frank Cheatham,
13 Plaintiff,
14 v.
15 City of Phoenix
16 Defendant.

No.
COMPLAINT
(Jury Trial Demanded)

17 For his Complaint against Defendant, Plaintiff alleges the following:

- 18 1. This is an action seeking money damages and equitable relief against the
19 City of Phoenix for the violation of the federal civil rights of its employee,
20 Mr. Frank Cheatham, brought pursuant to Title VII of the Civil Rights Act of
21 1964, 42 U.S.C. §2000e, as amended.
- 22 2. This Court has subject matter jurisdiction over this case under 28 U.S.C.
23 §§1331 and 1343(4).
- 24 3. Venue is proper in this District under 28 U.S.C. §1391(b) and 42 U.S.C.
25 §2000e-5(f)(3), because the events giving rise to this Complaint transpired
26 in Arizona.

- 1 4. Frank Cheatham is a citizen of the United States of America residing in
2 Phoenix, Arizona.
- 3 5. Defendant City of Phoenix (the "City") is a municipal corporation in the
4 State of Arizona.
- 5 6. The City has been engaged in an industry affecting commerce and has had
6 at least fifteen employees for each working day in at least twenty calendar
7 weeks this year or last year at all times material to this Complaint.
- 8 7. Mr. Cheatham began his employment with the City of Phoenix Fire
9 Department as a Firefighter in 1979 and is still employed by the Phoenix
10 Fire Department.
- 11 8. Mr. Cheatham's job performance during his thirty-four year tenure with the
12 Phoenix Fire Department has been uniformly excellent, as reflected by the
13 fact that the Fire Department has repeatedly promoted him to positions of
14 increasing responsibility within the Fire Department.
- 15 9. Specifically, during his career with the City of Phoenix Fire Department, the
16 Department promoted Chief Cheatham to the positions of Fire Engineer,
17 Fire Captain, Fire Battalion Chief, and Fire Battalion Deputy Chief Shift
18 Commander.
- 19 10. Chief Cheatham has never been disciplined in over three decades of loyal,
20 diligent service to the Phoenix Fire Department.
- 21 11. In approximately November 2009, while acting in his official capacity as a
22 "Deputy Chief Shift Commander" of "South Shift Command," Chief
23 Cheatham saw several inappropriate, sexually suggestive drawings and
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26
27
28

1 items—specifically, two depictions of a penis and testicles—openly
2 displayed in the workplace at Fire Station 1.

3 12. The inappropriate sexual drawings and items were brought to Chief
4 Cheatham's attention by a Fire Captain on Chief Cheatham's staff who
5 acted as Chief Cheatham's Assistant.
6

7 13. The inappropriate sexual drawings and items of which Chief Cheatham
8 complained violated the Fire Department's policies prohibiting sexually
9 offensive conduct in the workplace.
10

11 14. Chief Cheatham also reasonably believed that the sexual drawings and
12 items of which he complained violated Title VII of the Civil Rights Act of
13 1964 because they were creating a sexually hostile work environment.
14

15 15. Accordingly, pursuant to his official duties with the Fire Department, Chief
16 Cheatham admonished the supervisors at Fire Station 1 that such drawings
17 were inappropriate and would not be tolerated in the future.

18 16. After Chief Cheatham admonished the supervisors of Fire Station 1
19 regarding the sexually inappropriate drawings and items in the workplace,
20 the Battalion Chief who supervised Fire Station 1 asked Chief Cheatham
21 and Chief Cheatham's assistant to no longer take their meals at Fire
22 Station 1, where both Chief Cheatham and his assistant often took their
23 meals while at work.
24

25
26 17. The same Battalion Chief at Fire Station 1 also told Chief Cheatham that
27 the firefighters at Fire Station 1 would never trust Chief Cheatham's
28 assistant again and considered him to be a spy for Chief Cheatham.

1 18. Soon after Chief Cheatham complained of the inappropriate sexual
2 drawings and items, when he was exercising at a gym located at the
3 Phoenix Fire Department, he saw a t-shirt bearing another drawing of a
4 penis and testicles draped over a piece of gym equipment.
5

6 19. Soon thereafter, Chief Cheatham received a large brown envelope in
7 interoffice mail containing two small pieces of pasta, one of which
8 resembled a penis and the other of which resembled a vagina.
9

10 20. The piece of pasta resembling a vagina had Chief Cheatham's first name
11 ("Frank") written on it.

12 21. Soon thereafter, in February of 2010, Chief Cheatham began hearing
13 rumors in the Department that he would be removed from his position as
14 Deputy Chief Shift Commander of South Shift Command.
15

16 22. In March of 2010, Chief Cheatham was officially informed by telephone by
17 his supervisors at the Phoenix Fire Department that the Department had in
18 fact decided to remove him from his position of Deputy Chief Shift
19 Commander of South Shift Command and involuntarily transfer him to the
20 Department's "Safety Division."
21

22 23. Chief Cheatham's job duties at the Fire Department's "Safety Division" are
23 undefined, do not involve the supervision of firefighters, do not require him
24 to exercise his management skills, and leave him with little to do all day.
25

26 24. Moreover, in his position at the Fire Department's Safety Division, Chief
27 Cheatham has no direct reports, no staff, and no subordinates.
28

1 25. In stark contrast, while serving as Deputy Chief Shift Commander of South
2 Shift Command, Chief Cheatham had three full-time staff members, directly
3 supervised four battalion chiefs, and indirectly supervised approximately
4 440 firefighters.
5

6 26. In addition, Chief Cheatham has less favorable working hours in his new
7 position in the Safety Division than the hours that he enjoyed in his position
8 as Deputy Fire Chief Shift Commander of South Shift Command.
9

10 27. Chief Cheatham's position in the Fire Department's Safety Division has far
11 less prestige than his former position of Deputy Chief Shift Commander of
12 South Shift Command.
13

14 28. The Fire Department's involuntary transfer of Chief Cheatham from Deputy
15 Chief Shift Commander of South Shift Command to the Department's
16 Safety Division constitutes a substantive, de facto demotion.
17

18 29. The harassment, demotion, and involuntary transfer summarized above
19 were in direct retaliation for Chief Cheatham's complaints of discrimination
20 in the workplace at the Phoenix Fire Department.
21

22 30. Chief Cheatham repeatedly complained of the harassment and retaliation
23 summarized above to the appropriate authorities at the City of Phoenix.
24

25 31. Notwithstanding Chief Cheatham's repeated complaints, the City failed to
26 properly investigate his complaints, stop the harassment, and remediate
27 the retaliation.
28

1 32. The City of Phoenix Fire Department is engaging in a pattern and practice
2 of retaliating against its employees who complain of discrimination in the
3 workplace.

4
5 33. The harassment and retaliation summarized above had a substantial
6 negative impact on Chief Cheatham's employment and psychological well-
7 being and continue to do so.

8
9 34. Based on the retaliatory conduct of the Phoenix Fire Department as
10 summarized above, Chief Cheatham timely filed a Charge of Discrimination
11 against the City with the United States Equal Employment Opportunity
12 Commission (the "EEOC") on June 1, 2010. See attached Exhibit A.

13 35. After investigating Chief Cheatham's Charge of Discrimination against the
14 City of Phoenix, the EEOC concluded that:

15
16 I have considered all of the evidence obtained during the
17 investigation and find there is reasonable cause to
18 believe that Respondent [the City of Phoenix] violated
19 Title VII when it subjected Charging Party [Frank
20 Cheatham] to unlawful sexual harassment and retaliated
21 against him for complaining about a sexually hostile
22 work environment. The retaliation included failing to
take appropriate action against a subordinate employee
who sent Charging Party a letter that was retaliatory in
nature and demoting Charging Party.

23 See attached Exhibit B.

24 36. Chief Cheatham received a Right to Sue Letter from the United States
25 Department of Justice on approximately January 10, 2013 and timely
26 commenced this action within ninety days of his receipt of that letter.

27
28 **Wherefore**, Plaintiff respectfully requests the Court to:

- 1 A. Issue a declaratory judgment that the retaliatory conduct of
2 Defendant as described above violated Plaintiff's rights under Title VII
3 of the Civil Rights Act of 1964, 42 U.S.C. §2000e, as amended;
4
5 B. Award Plaintiff nominal damages in the amount of \$1.00;
6
7 C. Issue an injunction ordering the City not to retaliate against Plaintiff in
8 the future;
9
10 D. Award Plaintiff compensatory and punitive damages against
11 Defendant in an amount to be determined at trial;
12
13 E. Award Plaintiff his attorney's fees and costs under 42 U.S.C. §1988,
14 42 U.S.C §2000e-5(k) and any other applicable law; and
15
16 F. Award Plaintiff all other relief just and appropriate under the
17 circumstances.

18 Respectfully submitted this 29th day of March 2013.

19 **MONTOYA, JIMENEZ & PASTOR, P.A.**

20 s/ Stephen Montoya
21 Stephen Montoya
22 3200 North Central Avenue, Ste. 2550
23 Phoenix, Arizona 85012
24 Attorney for Plaintiff

25 I hereby certify that on March 29, 2013, I electronically transmitted the foregoing
26 document to the Clerk of Court using the CM/ECF System for filing and
27 transmittal of a Notice of Electronic Filing.

28 s/ Stephen Montoya

EXHIBIT A

EEOC Form 5 (11/09)

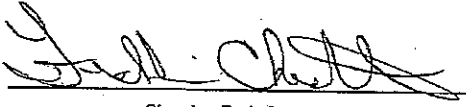
CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC		Agency(ies) Charge No(s): 540-2010-02623
Arizona Attorney General's Office, Civil Rights Division and EEOC <small>State or local Agency, if any</small>				
Name (Indicate Mr., Ms., Mrs.) Mr. Franklin H. Cheatham		Home Phone (Incl. Area Code) [REDACTED]		Date of Birth [REDACTED]
Street Address [REDACTED]		City, State and ZIP Code [REDACTED]		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)				
Name PHOENIX CITY OF (FIRE DEPARTMENT)		No. Employees, Members 500 or More		Phone No. (Include Area Code) (602) 262-7775
Street Address 2625 S 19th Avenue, Phoenix, AZ 85003		City, State and ZIP Code		
Name		No. Employees, Members		Phone No. (Include Area Code)
Street Address		City, State and ZIP Code		
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)				DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 04/042010 <input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I began my employment on approximately April 9, 1979; my current job title is Deputy Chief. On approximately November 4, 2009 I notified Bryant Johnston, Battalion Chief of inappropriate sexual suggestive pictures and items posted at Fire Station 1. I received a letter of instruction from a subordinate that is inappropriate and no action was taken. On approximately April 4, 2010 I was transferred and demoted to the position of Safety Chief.</p> <p>I believe that I have been discriminated against because of my race, Black; sex, male; and retaliated against for opposing practices made unlawful under Title VII of the Civil Rights Act of 1964, as amended.</p>				
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements		
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)		
Date Jun 01, 2010		Charging Party Signature 		

EXHIBIT B



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Phoenix District Office

3300 N. Central Avenue, Suite 690
Phoenix, AZ 85012-2504
(602) 640-5000
TTY (602) 640-5072
FAX (602) 640-5071

Charge No. 540-2010-02623

Franklin H. Cheatham

Charging Party

Phoenix City of (Fire Department)
2625 South 19th Avenue
Phoenix, AZ 85003

Respondent

DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, (Title VII). Timeliness and all other requirements for coverage have been met.

Charging Party alleged that he discovered sexually suggestive items in the workplace and reported this to Respondent. Charging Party alleged that after putting Respondent on notice about the sexually tainted work environment, he was subjected to sexual harassment; received a retaliatory letter of instruction from a subordinate; and was transferred and demoted to the position of Safety Chief.

I have considered all of the evidence obtained during the investigation and find there is reasonable cause to believe that Respondent violated Title VII when it subjected Charging Party to unlawful sexual harassment and retaliated against him for complaining about a sexually hostile work environment. The retaliation included failing to take appropriate action against a subordinate employee who sent Charging Party a letter that was retaliatory in nature and demoting Charging Party.

The Commission makes no finding regarding any other allegation made in the charge.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the confidentiality provisions of Title VII and Commission Regulations.

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement. Those terms should be provided to the Commission representative, **Julie Hammer**, at **602-640-5048** within 14 days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole, and to provide corrective and preventative relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation(s) and the resolution of the charge.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within 14 days, we may conclude that further conciliation efforts in this matter would be futile or non-productive.

On behalf of the Commission:

MAR 29 2012
Date

Rayford O. Irvin
Rayford O. Irvin *for*
District Director

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Cheatham

DEFENDANTS

City of Phoenix

(b) County of Residence of First Listed Plaintiff Maricopa

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephen Montoya, Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona 85012 (602) 256-6718

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, as amended.

Brief description of cause:
 Employment discrimination.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/29/2013

SIGNATURE OF ATTORNEY OF RECORD

s/ Stephen Montoya

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE